

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Yipes Transmission, Inc., a California Corporation, for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Competitive Local Exchange Services.

Application 00-03-028
(Filed March 14, 2000)

O P I N I O N**I. Summary**

Yipes Enterprise Services, Inc., formerly known as Yipes Transmission, Inc., (U-6357-C) (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide full facilities-based local exchange telecommunications services.¹ Specifically, Applicant proposes to offer last mile telecommunications service in urban areas within the San Francisco Bay Area, and within Los Angeles, Orange, and San Diego counties by constructing new fiber optic cable facilities and ancillary equipment between source facilities and structures to which service will be provided.² By this decision, we grant the requested authority subject to the terms and conditions set forth below, and close the proceeding.

¹ The acquisition of the assets, regulatory authorizations and operations of Yipes Transmission, Inc. by Yipes Enterprise Services, Inc. was approved by Decision 03-03-019 (U-6357-C).

² The term “last mile” refers to the distance between the source facility and the new customer.

II. Background

Applicant, a Delaware corporation, seeks authority to provide full facilities-based local exchange services. Applicant's principal place of business is located at 114 Sansome Street, 14th Floor, San Francisco, California 94104.

By Decision (D.) 00-06-068, Applicant was granted limited facilities-based and resale authority to provide local exchange services. By this application, it requests facilities-based authority to construct specified facilities. The requirements for a CPCN to provide limited facilities-based local exchange services are the same as those for full facilities-based authority, except for the requirements of the California Environmental Quality Act (CEQA). Therefore, the only issue before us in this application is whether its proposed construction, in consideration of the requirements of the CEQA, should be approved. Applicant remains subject to the requirements of D.00-06-068.

III. CEQA

CEQA requires the Commission, as the designated lead agency, to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

The purpose of this application is to provide last mile service within specified geographic areas of the San Francisco Bay Area, and parts of Los Angeles, Orange and San Diego Counties. Installation locations and methods include: use of existing dark fiber unbundled network elements, conduits, ducts, poles, structures, and rights-of-way of existing utilities and other companies for installation of new fiber optic cable. Applicant also plans to construct new underground conduit in existing public and utility rights-of-way.

Rule 17.1 of the Commission's Rules of Practice and Procedure requires the proponent of any project subject to Commission approval to submit with the application for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project that may be of concern, and to prepare the Commission's Initial Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report.

Based on its assessment of the application and the PEA, the Commission staff prepared a draft Initial Study/Mitigated Negative Declaration (draft MND) generally describing the project and the potential environmental effects within the geographic areas specified in Applicant's application and PEA. This means that, although the Initial Study identified potentially significant impacts, revisions that mitigate the impacts to a less than significant level have been agreed to by Applicant. (Pub. Res. Code § 21080(c)(2).)

Since it is not possible to exactly identify the location of each potential customer within the geographic areas submitted in the application and PEA, the project has no preplanned routes. To adapt to this type of project, the Commission developed the last mile MND as a process-oriented approach that sets performance standards for analyzing potential impacts, and identifying and implementing required mitigation measures within the geographic areas studied. The process for approving specific routes is described in detail at Attachment A, the MND. Because the specific locations within the geographic areas studied are not known, the last mile MND takes the conservative approach of presenting all possible impacts and required mitigation measures within those areas. This process provides CEQA compliance for the Commission and responsible agencies, but does not limit the authority of responsible agencies to issue permits

and approvals for future project routes. When Applicant knows the precise location of the customers, it will serve, it will submit a project description and construction work plan to the Commission, which must demonstrate that it was coordinated with all lead and responsible agencies, obtained all local permits, and complied with the local public notification process. The Commission will review the construction work plan, and if all requirements and performance criteria are met, it will issue a Notice to Proceed with Construction.

The Commission staff prepared a public notice that announced the preparation of the draft MND, the locations where it was available for review, and the deadline for written comments. The public notice was advertised in newspapers throughout the state. The draft MND was submitted to the State Clearinghouse, main local libraries, and city and county planning departments in project counties, as well as other appropriate state, county and city agencies for review and comment.

Public comments on the draft MND were reviewed and answered, as necessary. The Commission staff then finalized the MND (final MND). The final MND includes a list of mitigation measures with which Applicant must comply as a condition of its CPCN authority. It also includes a Mitigation Monitoring Compliance and Reporting Plan to ensure that the mitigation measures are followed and implemented as intended. The final MND, Introduction and Project Description are included as Attachment A. The final MND shall be attached to the formal file copy of this decision and is incorporated herein by reference. We hereby approve the final MND.

IV. Conclusion

We conclude that the application conforms to our rules for authority to provide facilities-based local exchange telecommunications services.

Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

V. Request to File Under Seal

Applicant requests that the financial information filed with this application be filed under seal. The financial information consists of financial statements and Applicant's estimated customer base. Applicant represents that the information is proprietary and sensitive. In Application 00-03-031, Applicant requested confidential treatment of the same information. By D.00-06-068, we granted confidential treatment for two years. Since Applicant did not request, pursuant to D.00-06-068, that the two-year time limit be extended, that information is no longer subject to confidential treatment. Therefore, we deny the request for confidential treatment in this proceeding.³

VI. Categorization and Need for Hearings

In Resolution ALJ 176-3036 dated April 6, 2000, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VII. Comments on the Draft Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant

³ Applicant does not object to denial of the request to file under seal at this time.

to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VIII. Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The final MND was prepared in compliance with, and pursuant to, CEQA.
2. The final MND represents the Commission's independent judgment.
3. Notice of this application appeared in the Daily Calendar on March 24, 2000.
4. No protests were filed.
5. Hearings are not required.
6. In Application 00-03-031, Applicant requested confidential treatment of the same information for which it requests confidential treatment in this proceeding. By D.00-06-068, the Commission granted confidential treatment for two years.
7. Since Applicant did not request, pursuant to D.00-06-068, that the two-year time limit be extended, that information is no longer subject to confidential treatment.

Conclusions of Law

1. Public convenience and necessity require Applicant's local exchange services to be offered to the public subject to the terms and conditions set forth herein.
2. Applicant must agree to, and is required to, carry out the mitigation measures in the final MND in compliance with CEQA.

3. With the incorporation of the mitigation measures in the final MND, Applicant's proposed project will not have potentially significant adverse environmental impacts.
4. The final MND should be adopted pursuant to CEQA.
5. Applicant's construction projects addressed in the final MND should be approved.
6. Applicant's request to file its financial information under seal should be denied.
7. Because of the public interest in local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Yipes Enterprise Services, Inc., formerly known as Yipes Transmission, Inc., (U-6357-C) (Applicant) to operate as a facilities-based provider of local exchange services, subject to the terms and conditions set forth below.
2. Applicant is authorized to construct the facilities addressed in the final Mitigated Negative Declaration (final MND), subject to the terms and conditions set forth below. The final MND, Introduction, and Project Description are included as Attachment A.
3. The entirety of the final MND shall be attached to the formal file copy of this decision and is incorporated herein by reference. It can be found at the Commission's web site at www.cpuc.ca.gov. Under "Regulated Area," click "Environmental." Then click "Current Projects."

4. The final MND is adopted pursuant to the California Environmental Quality Act.

5. Applicant shall fully implement the mitigation measures described in the final MND.

6. Applicant shall enter into a cost reimbursement agreement with the Commission for expenses accrued from implementing the mitigation and monitoring plan as described in the final MND. Compliance with this agreement is a condition of approval of the authority granted herein.

7. The Commission's Energy Division shall supervise and oversee the construction of the project insofar as it relates to monitoring and enforcement of the mitigation measures described in the final MND. The Energy Division may designate outside consultants, working under Energy Division direction and control, to perform on-site monitoring tasks. The Commission project manager (Energy Division, Environmental Projects Unit) shall have the authority to issue a Stop Work Order on the entire project, or portions thereof, for the purpose of ensuring compliance with the mitigation measures described in the final MND. Construction may not resume without a Notice to Proceed issued by the Environmental Projects Unit of the Energy Division.

8. Applicant's request to have the financial information filed with this application kept under seal is denied.

9. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.